

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

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| UNITED STATES OF AMERICA, |) | No. 15-CR-1020 MV |
| Plaintiff, |) | |
| |) | |
| vs. |) | Aspen Courtroom |
| |) | Santa Fe, New Mexico |
| ANGEL IBES DIAZ-RIVERA |) | |
| Defendants. |) | October 4, 2016 |
| |) | 9:54 a.m. |

TRANSCRIPT OF PROCEEDINGS
SENTENCING
BEFORE THE HONORABLE MARTHA A. VAZQUEZ
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography; transcript
produced by computer.

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1 THE COURT: In the matter of United States v. Angel
2 Diaz-Rivera.

3 May I have appearances, please?

4 MR. MEYERS: Joel Meyers on behalf of the United States.
5 Good morning, Your Honor.

6 THE COURT: Good morning, Mr. Meyers.

7 MR. PORI: Good morning, Your Honor. Brian Pori for
8 Angel Diaz-Rivera, who appears personally with the assistance of
9 the Court's Spanish interpreter.

10 THE COURT: Thank you. Okay. Mr. Diaz, you are here
11 for sentencing this morning. Have you had an opportunity to
12 review the presentence report and go over that with your attorney?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. In addition to the presentence
15 report, I have reviewed a sentencing memorandum, objections to the
16 presentence report. Both of those documents were filed by your
17 attorney. Did you get a chance to review those documents with
18 your lawyer as well?

19 THE DEFENDANT: Yes.

20 MR. MEYERS: Actually, Judge, if you'll excuse me. The
21 objection was filed by the United States.

22 THE COURT: I'm sorry, you're right. The objections to
23 the presentence report, as Mr. Meyers has indicated, were filed by
24 the Government. Did you review that document as well?

25 THE DEFENDANT: Yes.

1 THE COURT: The Probation Department also filed an
2 addendum and a second addendum to the presentence reports. Did
3 you get a chance to go over those two documents as well?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. All right. Those are all the
6 documents that I received. Was anything else filed on behalf of
7 either party?

8 MR. PORI: Nothing else was filed, Your Honor. This
9 morning, I provided your Clerk with just a very brief letter from
10 the Food Services Director at the Torrance County Detention
11 facility. I don't know if the Court had an opportunity to review
12 that. I'm sorry for the delay in providing it to the Court. I
13 just received it yesterday.

14 THE COURT: I'm sorry, Linda. I left that on my desk.
15 Thank you.

16 MR. PORI: I have a copy here. And I provided a copy to
17 Mr. Meyers.

18 THE COURT: Thank you. Thank you. I have reviewed it.

19 MR. PORI: Thank you.

20 THE COURT: You may proceed.

21 MR. PORI: Thank you, Your Honor.

22 Your Honor, we did, in fact, file an objection to the
23 presentence report, that was that Mr. Diaz-Rivera would qualify
24 for the safety valve. As reflected in the addendum to the
25 presentence report, Probation agrees that he completed his

1 sufficient debrief and is eligible for a safety valve reduction.
2 That would be the final adjusted offense level to 21 with a
3 criminal history category of I, yields a guideline sentence of 37
4 to 46 months.

5 We also ask the Court to consider a departure based on his
6 family ties and responsibility, his age, and his lack of any
7 significant -- of any criminal history whatsoever. We believe
8 that all of those things demonstrate that this act was an
9 abhorrent act. And I think paragraph 15 of the presentence report
10 provides all of the facts, which the Court would need to satisfy
11 that departure, namely this is an individual who was employed for
12 over 21 years as a truck driver in Tijuana, Mexico, but starting
13 in 2013, he couldn't find a job as a truck driver. He went to
14 work in a factory. That job was not sufficient to care for his
15 family. And so as a result, he spent two months searching in vain
16 to try to find a job, until ultimately he was referred to an
17 individual in Tijuana who supposedly had a job as a truck driver.

18 When he went to find out about that job, he was told that he
19 would be paid \$800 to transport what he believed to be marijuana
20 from San Diego to New York. He foolishly agreed to accept that
21 job because he was desperate to earn money. He was stopped in
22 Albuquerque. When he was questioned by Agent Perry, he readily
23 consented to a search of his luggage. He was arrested, and when
24 he was arrested, he told the Court -- he told Agent Perry what is
25 relayed ultimately to the Court in paragraph 15. And he again

1 related that information during a debrief with the Government.

2 Finally, Your Honor, we think that his status as a deportable
3 alien would justify a departure. As the Court may know, if he
4 were to receive a sentence of 37 months and he was a United States
5 citizen, given his past history and use of marijuana, he would
6 qualify for participation in the residential drug abuse program.
7 Participation in that program would take a year off of his
8 sentence. Along with that, it would authorize him for an early
9 release to the halfway house, none of which he's eligible for as a
10 deportable alien. So in my experience, someone who received a
11 37-month sentence and completed a drug abuse program would
12 probably serve an actual sentence of about 17 months.

13 Consequently, Mr. Diaz faces a sentence virtually double what
14 a similarly-situated United States citizen would face simply by
15 virtue of his status as a deportable alien. And I'd ask the Court
16 to consider that and perhaps not to depart all the way down to the
17 17 month but to depart in a manner that the Court believes is
18 sufficient.

19 Finally, to address the Government's concern that Mr. Diaz is
20 not a minimal participant, the Sentencing Commission has made it
21 very clear in the last few years that an individual who lacks a
22 proprietary interest in the drugs, who has no knowledge of the
23 criminal enterprise for which they are working, who simply acts as
24 a courier, is, in fact, eligible for a minor to a minimal role
25 reduction. Again, the key is an individual who has no knowledge

1 of the enterprise, who has no role in the enterprise beyond being
2 a courier, and most important, who lacks any proprietary interest
3 in the drugs.

4 I don't think, if you accept paragraph 15 as true -- and I
5 don't think there's any dispute that the Government is challenging
6 those facts -- Mr. Diaz, in fact, qualifies for all of those
7 prerequisites for a reduction as a minimal participant. So we
8 would ask the Court to impose, at the minimum, a low-end guideline
9 sentence of 37 months and whatever further departure the Court
10 would feel is justified given the totality of the sentences --
11 sentencing circumstances, so that the Court would impose a just
12 and reasonable sentence that is sufficient but not greater than
13 necessary to achieve the sentencing aims established by Congress
14 in 18 U.S.C. Section 3553(a).

15 And I know Mr. Diaz wanted to address the Court.

16 THE COURT: Thank you.

17 Mr. Diaz?

18 THE DEFENDANT: Good morning, Your Honor. First of all,
19 I would like to apologize to you and to the United States for
20 having done what I did. I was desperate to get money, and I would
21 like you to consider -- I would like you to consider just what my
22 attorney has said, to have just a just and fair sentence and for
23 me to be able to go back to my family and to be able to support
24 them honestly as I have done in the past. This has taught me that
25 I do need to respect the U.S. laws and that I will not do this

1 again.

2 That's all. Thank you for hearing me.

3 THE COURT: You're welcome, Mr. Diaz. Thank you very
4 much for your statement.

5 On behalf of the Government, Mr. Meyers?

6 MR. MEYERS: Can I use the podium, please, Your Honor?

7 THE COURT: Yes. If you don't mind stepping aside.
8 Thank you very much.

9 MR. MEYERS: First thing's first, Judge. I'd like to
10 address the Government's objection to the PSR. As the Court is
11 aware, under the sentencing guidelines, the very beginning,
12 there's two prerequisites in order to find that a role adjustment
13 is appropriate. First, that there's multiple participants in the
14 offense, and then some differentiation in their relative
15 culpabilities.

16 Now, in order for this role adjustment to apply, it's the
17 Defendant's burden, by a preponderance of the evidence, to
18 demonstrate that the role reduction is appropriate. The Defendant
19 has wholly failed in that burden, Judge. And I will point the
20 Court to United States v. Eckhart. It's a 2009 Tenth Circuit
21 case, 569 F.3d 1263, which talks about how heavily fact-dependent
22 this role adjustment is. And there was -- in that case, the Court
23 was correct in finding that no role -- the District Court was
24 affirmed in finding no role adjustment applied after the Defendant
25 had presented no evidence apart from his own self-serving

1 statements for which the Court could find that the role adjustment
2 was appropriate.

3 Here, we have absolutely no evidence, Judge. All we have is
4 Mr. Pori's sentencing memorandum and unsubstantiated facts in the
5 PSR. So I don't think, even under procedural reasonableness
6 standards, the Court can find that a role adjustment applies.
7 Whether it's a minor role adjustment or a minimal role adjustment,
8 the Defendant has the burden to present evidence, and he has not
9 at this point done that, Your Honor.

10 I'd also point the Court to a Sixth Circuit case -- it's a
11 little bit dated, but I think the premise is important -- United
12 States v. Kingston, at 922 F.2d 1234. Again, in that case, the
13 Circuit Court found the District Court erred in finding a role
14 adjustment applied without hearing any proof from either party in
15 support of that contention. And that's exactly what's occurred
16 here, Judge. I think the Circuit looking at this, without having
17 any evidence, would no doubt have to send it back to this Court
18 for proper procedural reasonableness when it comes to sentence
19 here.

20 Certainly, I think Mr. Pori's arguments could go well for a
21 variance, but getting in the first step of what the Court is
22 required to do under 3553(a) is to properly determine the
23 guidelines. And by applying cavalierly a four-level role
24 adjustment where it's not appropriate, I think, would amount to
25 procedural error.

1 Let's talk about the specifics of the case and just couriers
2 in general. And I know it's cited in my sentencing memorandum,
3 but I think it bears saying that couriers are not entitled to an
4 automatic role adjustment. Couriers maintain an integral if -- a
5 universally-important role within drug trafficking. It's not just
6 me saying that. Judge, I think it's important that Circuits all
7 across the country are saying that. I'll point the Court to
8 United States v. Santos-Garcia at 313 F.3d 1073. That's an Eighth
9 Circuit case. Nichols v. United States, 75 F.3d 1137, a Seventh
10 Circuit case. I already cited to the Sixth Circuit case, United
11 States v. Kingston.

12 Allow me to pivot to the Second Circuit, also holding the
13 same, that couriers are not entitled to automatic role
14 adjustments. United States v. Shonubi, S-H-O-N-U-B-I. It's at
15 998 F.2d 84, out of the Second Circuit. Ajala v. United States
16 Parole Commission, a Ninth Circuit case, 997 F.2d 651. United
17 States v. Cacho, an Eleventh Circuit case, 951 F.2d 308. United
18 States v. Lui, L-U-I, 941 F.2d 844. A Third Circuit case, United
19 States v. Headly, 923 F.2d 1079. Fifth Circuit case, United
20 States v. Gallegos, 868 F.2d 711. All of these standing for the
21 proposition, just because someone comes and says they're a
22 courier, they're entitled to a role adjustment.

23 Mr. Diaz-Rivera's role in this was indispensable. At this
24 point, we haven't even heard if there were other people involved
25 in this, which would allow for a role reduction to even be

1 appropriate. We have nothing more than self-serving statements.
2 The Court has heard no testimony, has been provided no evidence
3 other than the PSR, which the Court cannot accept just on face
4 value without any facts behind it.

5 Putting all that aside, Your Honor, I will certainly concede
6 that Defendant has qualified for the safety valve reduction. I do
7 believe the four prerequisites are there, as well as the safety
8 valve debrief, which the Defendant did attend and provide
9 basically that same information.

10 Now, let's look at this from kind of the vantage point of
11 3553(a), because the Government's sentencing request is not going
12 to change regardless of how the Court calculates the guidelines.
13 Sure, the Court is well aware of the nationwide heroin epidemic
14 that this country is facing. New Mexico has been at ground zero
15 for that heroin epidemic for generations, particularly Northern
16 New Mexico, as I know the Court is aware. What's more insidious
17 lurking behind that heroin epidemic that's killing tens of
18 thousands of people each year in the United States -- I would say
19 a handful of people have probably died of drug overdoses in the
20 few minutes that I've been speaking so far. Lurking behind that
21 is fentanyl, which is 50 times stronger than heroin. Heroin which
22 is 100 times stronger than morphine, fentanyl and all of its
23 derivatives.

24 As I mentioned in my sentencing memorandum, the amount of
25 fentanyl that Mr. Diaz-Rivera possessed had enough for 3 million

1 lethal doses. That's more than the citizens of the District of
2 New Mexico. Every day people are being killed as a result of
3 fentanyl, most unaware of its strength and tragic consequences.

4 Agent Perry was at risk just by handling the fentanyl.
5 Mr. Diaz-Rivera himself was at risk. Baggage handlers on the bus
6 he was on, other passengers, anyone along the way was at risk of a
7 lethal overdose for that insidious substance that Mr. Diaz-Rivera
8 possessed and intended to distribute. We're taking his word for
9 it that it was from San Diego to New York. Anywhere along the
10 way, people were at risk.

11 And he wants this Court, at least through Mr. Pori's
12 statements, that for 21 years, he was a law-abiding truck driver,
13 supporting his family, and then after only two months, he throws
14 all of that away and jumps basically into the deep end of drug
15 trafficking, because some strangers offered him \$800 to bring what
16 he thought was marijuana from San Diego to New York to other
17 strangers. Does that really make any sense? \$800 for that small
18 amount of marijuana, I don't think anybody in their right mind
19 would pay that much money.

20 It's very convenient that Mr. Diaz can come up here and say,
21 "I just thought it was marijuana. Sentence me less. I didn't
22 know who all these people were." But is there any evidence to
23 support that? I think it belies common sense that anybody would
24 pay \$800 for somebody to bring, essentially, a couple thousand
25 dollars, at most, worth of marijuana across the country by bus.

1 \$800 is a lot of money.

2 Marijuana, as I'd be guessing the Court or basically anybody
3 in this courtroom would know, has quite a distinctive odor.
4 Certainly Mr. Diaz would be aware of such a distinctive odor that
5 it has. And it not being present, maybe this wasn't marijuana.
6 And maybe he didn't know it was fentanyl. Maybe it was just some
7 other white powder.

8 But, certainly, I would suggest that the facts and
9 circumstances -- the objective facts and circumstances, as we
10 know, would belie any assertion that Mr. Diaz was just some dupe
11 thinking he was bringing marijuana between two strangers that he's
12 never met after two months of unemployment.

13 Now, Mr. Pori, you know, pleads to the Court here for
14 Mr. Diaz, the victim, that somehow prison is going to be much more
15 difficult for him than other people, and, you know, I would think
16 that Mr. Diaz should vigilantly respect the laws of a country
17 where he's not a citizen for fears that something like this may
18 happen.

19 Now, another thing that Mr. Pori brings up is the RDAP
20 program, Residential Drug and Alcohol Program, that gives many
21 people within the Bureau of Prisons tools that are necessary for
22 when they get outside. Most people in prison are dealing with
23 substance abuse and alcohol problems. And it's an intense
24 program, and it does provide a reward to people who participate in
25 it, not just a lifetime reward but a reward as far as those

1 sentences are concerned.

2 But this is not something that Mr. Diaz would qualify for.
3 It's not a gift. It's not please give me 9 to 12 months of less
4 time because I say I want to take this program. I don't think he
5 qualifies for it. He doesn't need this program, and lucky for
6 Mr. Diaz that he doesn't. I would turn the Court's attention to
7 paragraph 44 of the PSR, where it talks about substance abuse. It
8 doesn't indicate any substance abuse problems. I mean, how many
9 people does the Court see that are here only because of their
10 substance abuse problems or directly as a result of their
11 substance abuse problems? Mr. Diaz is not one of those people,
12 Judge. He's making an economic choice to deliver a killing agent
13 across the country, not somebody who is in desperate times based
14 upon substance abuse and not clear thinking.

15 Every day, Judge, I get an e-mail from the Chief Medical
16 Investigator of New Mexico imploring us to do something about the
17 fentanyl problem. In 2015, Judge, there was no fentanyl, elicited
18 fentanyl in New Mexico. Mr. Diaz had the distinction of being the
19 first fentanyl case that we had in the district. And over the
20 last several weeks, not a day has gone by where Dr. Kurt Nolte
21 hasn't e-mailed me with results of toxicology examinations of
22 people that are his patients -- and his patients are all dead
23 because he's a pathologist -- of people overdosing and dying of
24 fentanyl in the District of New Mexico. It is here. And while
25 Mr. Diaz, we can remember him as kind of patient zero for this,

1 the Court is going to see a lot more of these cases here and a lot
2 more of these cases with death resulting. And I'm only happy to
3 say that that didn't happen here based upon the actions of Agent
4 Perry, nor did it happen anywhere along the United States.

5 And it's almost like -- in preparing for this, the sentence
6 the Government is asking for is a sentence of 87 months, which I
7 think is grounded in the guidelines, as the Government sees them,
8 the high end of that as an appropriate sentence. I would almost
9 suggest that a variance higher than that would be appropriate, but
10 I do stand by the previous recommendation of an 87 month sentence.
11 I thank you, Judge.

12 THE COURT: Thank you.

13 MR. PORI: Your Honor, there's nothing cavalier about
14 applying the role adjustment provided by the United States
15 Sentencing Guidelines. There's ample evidence to support that
16 role adjustment.

17 Not only are there paragraphs 15 and 16 of the presentence
18 report, not only are those facts undisputed by the Government,
19 other than Mr. Meyers' argument, the Government admits that
20 Mr. Diaz-Rivera qualifies for the safety valve reduction. The
21 same facts which Mr. Diaz-Rivera related to the Government to
22 qualify for the safety valve reduction are the same facts that
23 Mr. Diaz-Rivera related to Agent Perry, the same facts he related
24 to the probation department in preparing the presentence report,
25 the same facts he gave to the Government during the debrief. The

1 Government accepts them for the purpose of the debrief but not for
2 purposes of the role reduction. But I think the reality is that
3 those facts are undisputed, and not just unadorned, but are
4 corroborated by the circumstances of this case.

5 Would the Government have this Court believe that a man who
6 lives in Tijuana, Mexico, with his parents, his wife and his
7 daughter, would all of a sudden shift from being a worker in a
8 *maquiladora* to a purveyor of fentanyl. The Government cited a
9 litany of cases that talks about the essential role that couriers
10 play in drug distribution, and I'm not arguing that. But what I
11 am -- all of those cases predate the amendments to the commentary
12 and the guidelines section under 3B1.2. The Sentencing Commission
13 has reviewed this. The Sentencing Commission has set the
14 standard. And that standard is an individual who lacks a
15 proprietary interest in the drugs, who has no knowledge of the
16 drug organization for which he or she is working, can qualify for
17 this role reduction.

18 Those are the recommendations of the Sentencing Commission.
19 Those are the considered opinion of the Sentencing Commission
20 following extensive study and commentary regarding who could
21 qualify for these role reductions. Those are recent commentary
22 amendments to the guidelines, and those guide not only this Court
23 but the Government and everyone else who's considering, and, in
24 effect, overcome the cases cited by Mr. Meyers.

25 The information that Mr. Diaz-Rivera has consistently given

1 to Probation, to Agent Perry, to the Government in a debrief, is
2 corroborated. Mr. Meyers is correct. This is fentanyl. As the
3 Court may recall, even Agent Perry, one of this district's most
4 experienced drug interdiction officers, did not recognize that
5 this was fentanyl. He averred under oath in a sworn complaint
6 that it was a mixture of methamphetamine and cocaine, despite the
7 fact that in his experience, as indicated in the motion to
8 suppress, he's never seen a drug distributor mix cocaine and
9 methamphetamine, that that would be irrational to mix those two
10 drugs together. And yet that was his sworn statement.

11 That proves, if nothing else, that Mr. Diaz was a minor
12 participant, because even someone like Agent Perry was not aware
13 that this was fentanyl. Even someone like Agent Perry was duped
14 by the nature of this circumstance. And would the Government
15 truly have us believe, with all that you know, I know, Mr. Meyers
16 knows, about the role of drug couriers on a bus, the owner -- the
17 people who have proprietary interest in the drug, three million
18 doses at a dollar a dose -- and we think it's much more than
19 that -- an owner who has \$3 million worth of dope is going to ride
20 the bus and carry his own dope, is going to rise out of the
21 *malquiladora* and become a fentanyl distributor? No. It belies
22 all common sense. Who is the drug -- who is the narco going to
23 put on the bus? A dupe, a rogue, an individual desperate to make
24 money.

25 Given all of the corroborating circumstances in this case,

1 there is no doubt that Mr. Diaz was used by drug traffickers in
2 Tijuana to distribute fentanyl. I will not disagree with
3 Mr. Meyers about the scourge of fentanyl. Fentanyl is what killed
4 Prince. Any drug, fentanyl, heroin, methamphetamine, any drug,
5 for those of us who, in our personal life, have struggled in our
6 families and in our communities with drugs, all of those drugs are
7 evil. All of those drugs destroy families. All of those drugs
8 destroy lives. All of those drugs kill slowly or quickly.
9 There's no doubt about that.

10 And that's not what you're being asked to do today. You're
11 not being asked to take this gentleman riding on a bus and make
12 him -- put his head on a stick and make him an example to all of
13 New Mexico who are suffering from the scourge of drugs. You are
14 asking to fairly and honestly apply the United States sentencing
15 guideline given the guidance provided by the Sentencing
16 Commission. And if, between paragraph 15 and 16 and the
17 corroborating circumstances, you are convinced by a preponderance
18 of the evidence that Mr. Diaz did not have a proprietary interest
19 in those drugs, was not aware of the organization for which he was
20 working, was not even aware of which drug he was transporting, you
21 may find that he was a minimal participant. And, indeed, absent
22 any further showing from the Government, that's all that you can
23 find given the facts before this Court. So we do ask the Court to
24 impose the minimal participant role and to sentence Mr. Diaz
25 accordingly.

1 The only other thing I would add, Your Honor, is I think it's
2 important, the note that I gave you this morning describing
3 Mr. Diaz, it may seem a simple note about a gentleman who has
4 spent almost two years in custody waiting for this case to be
5 resolved, who has done nothing but work in the kitchen. But what
6 that note reveals is Mr. Diaz's character. Not only is he a hard
7 worker, not only is he an individual who has lived in the Torrance
8 County detention facility without a single rule violation of any
9 kind, not only is he a person who's gotten up every day and put on
10 those big rubber boots and waded into the kitchen. This is who he
11 is. He is a hardworking man who spent 21 years, who in a foolish
12 attempt to make money for his family, agreed to transport a drug
13 that he didn't even know the nature of that drug.

14 And I think his subsequent conduct, the time he's done in
15 custody, his hard work, his respect for all of the rules, his
16 ability to get along with everyone he meets, is further evidence
17 that this is not a drug trafficker. This is not a kingpin. This
18 was a man who made a foolish decision who will pay for it for the
19 rest of his life but who need not pay for it any more than
20 recommended by the Sentencing Commission itself in applying a role
21 reduction. That's all I have.

22 THE COURT: Thank you. Angel Diaz-Rivera is before the
23 Court for sentencing in case number 15-CR-1020. Pursuant to
24 Booker, this Court must consider the advisory sentencing
25 guidelines as well as each of the additional factors stated in

1 18 U.S.C. 3553(a) in imposing a reasonable sentence that is
2 sufficient but not greater than necessary to comply with the
3 purposes set forth in 3553(a).

4 The Court adopts the presentence report factual findings and
5 finds that the Defendant meets the criteria in 18 U.S.C.
6 3553(f)(1)-(5). The sentence will be imposed pursuant to 5C1.2 of
7 the guidelines and the applicable guideline range without regard
8 to the statutory minimum sentence. The offense level is 21 and
9 the criminal history category is I. The guideline range is 37 to
10 46 months.

11 Pursuant to Section 18 U.S.C. 3553(a)(1)-(7), the Court has
12 determined that there exists the following sentencing factors that
13 warrant a sentence outside the guideline range. The Court is
14 going to supplement this morning's decision with a written
15 opinion.

16 At this point, the decision of the Court is that, as to
17 indictment 1:15-CR-01020-001, Mr. Angel Ibes Diaz-Rivera will be
18 committed to the custody of the Bureau of Prisons for a term of 30
19 months. Pursuant to Section 5D1.1(c), the Court is not going to
20 impose a period of supervised release. The Court recommends that
21 ICE begin removal proceedings during the service of this sentence.

22 Based upon his lack of financial resources, the Court will
23 not impose a fine. There is a \$100 special assessment payable to
24 the United States District Court Clerk's office.

25 Under the terms of the plea agreement, Mr. Diaz, you did

1 waive your right to appeal your final sentence of the Court, so
2 there are no appellate rights.

3 Is there a recommendation for placement?

4 MR. PORI: Your Honor, we request placement near
5 Tijuana, Mexico, consistent with his status.

6 THE COURT: The Court will make that recommendation,
7 then.

8 Any questions with regard to the Court's sentence?

9 MR. PORI: No, Your Honor.

10 MR. MEYERS: I have one question, Judge. I think it's
11 certainly implicit within the Court's ruling, but the Court is
12 overruling the United States' objection?

13 THE COURT: Yes. The Court is overruling that, but I'd
14 like to have an opportunity to address the arguments more fully
15 than the way I ordinarily do address the 3553(a) factors and some
16 of the case law that you cited. I don't have copies of any of the
17 cases, and I'd like an opportunity to address them more fully.

18 MR. MEYERS: Thank you.

19 THE COURT: Thank you.

20 MR. PORI: Thank you, Your Honor.

21 THE COURT: Thank you.

22 **(Court in recess at 10:27 a.m.)**
23
24
25

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ANGEL IBES DIAZ-RIVERA,
Defendant.

No. 15-CR-1020 MV

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Carmela V. McAlister, CRR, RPR, New Mexico CCR #306,
Federal Official Realtime Court Reporter, in and for the United
States District Court for the District of New Mexico, do hereby
certify that pursuant to Section 753, Title 28, United States
Code, that the foregoing is a true and correct transcript of the
stenographically reported proceedings held in the above-entitled
matter on October 4, 2016, and that the transcript page format is
in conformance with the regulations of the Judicial conference of
the United States.

Dated this 13th day of October 2016.

/s/

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